U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC 00 054 54160 Office: VERMONT SERVICE CENTER Date: JAN 19 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

(Deleted to prevent clearly unwarranted invasion of personal privacy)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Massachusetts corporation that is engaged in software engineering, support and consultancy. It seeks to employ the beneficiary as the director of special projects and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director of the Vermont Service Center denied the petition because the petitioner failed to establish the existence of a qualifying relationship between the petitioner and the foreign entity.

On appeal, counsel submits a brief. The petitioner submits an affidavit and two letters from individuals who discuss the relationship between the petitioner and the foreign entity.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The petitioner claims the existence of a qualifying relationship between it and Techlead Software Engineering Pvt. Ltd., located in India. As counsel argues on appeal that the relationship is one of a parent/subsidiary or, in the alternative, one of affiliates, each relationship will be separately examined in this proceeding.

I. SUBSIDIARY

The relationship between the petitioner and the foreign entity does not qualify as a valid parent/subsidiary relationship for the purposes of this visa classification.

First, section 203(b)(1)(C) of the Act states, in pertinent part:

* * *

> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and **who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive** [emphasis added].

It is clear from this definition that the petitioner must be either the same company, or an affiliate or subsidiary of the foreign entity. The petitioner cannot be a parent of the foreign entity.

In the I-140 petition, the petitioner claimed that "[redacted] Corp. in Prune, India is a subsidiary of [redacted] Corp. in Massachusetts." This statement indicates that the petitioner is the alleged parent and the foreign entity is the alleged subsidiary. This type of relationship is not valid for immigrant visa classification as a multinational executive or manager, as the petitioner must be a subsidiary or affiliate of the foreign entity, not the foreign entity's parent.

Second, 8 C.F.R. 204.5(j)(2) states, in pertinent part:

> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The definition of subsidiary clearly states that the subsidiary must be owned and controlled by a parent. According to 8 C.F.R. 214.2(l)(1)(ii)(I), a *parent* is a firm, corporation, or other legal entity which has subsidiaries.

On appeal, counsel argues that the beneficiary can be considered a parent because he controls both the U.S. and foreign entities. Clearly, however, the beneficiary is not a firm, corporation or legal entity and, moreover, an individual cannot have subsidiaries. Therefore, the beneficiary cannot fit the definition of a parent pursuant to § 214.2(l)(1)(ii)(I).

Accordingly, counsel was incorrect when she claimed that the relationship between the petitioner and the foreign entity could be considered a parent/subsidiary relationship.

II. AFFILIATE

8 C.F.R. 204.5(j)(2) states, in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; * * *

The petitioner makes the following claim regarding the ownership of the U.S. and foreign entities:

U.S. Entity:

[redacted] 50% ownership
50% ownership

Foreign Entity:

[redacted] [beneficiary] 33.3% ownership
33.3% ownership
33.3% ownership

The U.S. and foreign entities also do not qualify as affiliates for two reasons.

First, counsel argues that the petitioner and the foreign entity are affiliates because they are owned and controlled by the same individual who, in this case, is the beneficiary. Ownership must be established by documentary evidence, such as stock certificates, stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Although the petitioner submitted evidence that he owns a percentage of the foreign entity's stock, the petitioner failed to present a stock certificate or other credible documentary evidence of his ownership of the U.S. entity.

On appeal, the petitioner submits a letter from Ramgopal Rao, who claims that he and the beneficiary own the petitioner in equal

number of shares. The petitioner also submits a letter from [redacted] the petitioner's assistant secretary, which states that the beneficiary and Mr. [redacted] each own 50,000 of the 100,000 shares of the petitioner's stock. Neither of these letters is acceptable evidence of ownership. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, even if the petitioner had submitted acceptable evidence of ownership of the U.S. entity, the petitioner, failed to present credible evidence of the beneficiary's alleged control over the U.S. and foreign entities.

As the beneficiary does not own a majority of the shares in either company, the petitioner must establish that the beneficiary controls each company. On appeal, the petitioner submits an affidavit from the other alleged owners of the foreign entity, who state that the beneficiary controls the overseas company. The letter submitted by Mr. Rao, the alleged owner of the petitioner along with the beneficiary, also claims that the beneficiary controls the petitioner.

The letter and affidavit, however, are not acceptable pieces of evidence. To establish control, the petitioner must submit documentary evidence, such as agreements over the voting of shares, contracts entered into over the voting of shares, or agreements regarding proxy votes. Mere affidavits, letters, or statements by counsel, the petitioner, or other individuals, will not suffice.

Finally, the petitioner and the foreign entity are not affiliates because they are not owned by the same group of individuals, each of whom owns and controls approximately the same share or proportion of each entity.

It is clear from the alleged ownership of each entity that the same group of people do not own and control both the foreign and U.S. entities; the U.S entity has two owners, and the foreign entity has three owners.

The evidence in the record clearly reflects that the petitioner is not a subsidiary of the foreign entity, or that the petitioner and the foreign entity are affiliates. Therefore, the decision of the director is affirmed.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.